

# TERMS AND CONDITIONS OF SALE TO PROFESSIONALS

Gymglish

January 6th, 2020 v4.2

## INTRODUCTION

The A9 Company (hereafter referred to as "The Company"), an SAS with a capital of 81,382 euros, is registered with the Registry of Trades and Companies of Paris under RCS Paris B 451 911 812. Its headquarters are located at 65 rue de Reuilly, 75012 Paris, France - email address : support@gymglish.com. Its EEC VAT number is FR10451911812. The Company primarily provides online training services. The Company's website publication manager is Benjamin Levy.

The Terms and Conditions of Sale to Professionals ("PRO TCS") apply to all sales made by the Company to non-individual customers.

For translations, the reference document for interpretation shall be the original French, whose latest applicable version is available at the following address : <https://www.gymglish.com/documents/pro-cgvps-fr-latest.pdf>

When validating their order, customers agree to the terms of the specific order, the entirety of the present PRO TCS and the Terms of Use (TOU) available at the following address :

<https://www.gymglish.com/documents/CGU-GymGlish-en-latest.pdf>

In cases where the User is not the Client, the Client remains responsible for the acceptance and respect of the TOU for each of the Users the Client designates and to whom the Client intends to propose the Company's Services, under its responsibility, as well as the acceptance of the Privacy & Use of Information Policy, available at the following address :

<https://www.gymglish.com/documents/privacy-policy-en-latest.pdf>

Possible specific Conditions of Sale can supplement or replace the present ones. They will be communicated

## Explanatory comments :

*This is what we sell, and how to buy it.*

*Explanatory comments in the right-hand column of this document have no binding legal value ; they serve only to facilitate the overall comprehension of the document, re-written in simpler terms.*

to the Client who will be asked to accept them.

## 1 DEFINITIONS

**Subscription** refers to placing the Service at a User's disposal for a fixed price and duration and, where appropriate, a maximum number of Lessons completed by the User.

*Strictly speaking, we are not selling Lessons but a Subscription at a fixed price allowing access to our Service during the Subscription period.*

**Activation** refers to The start date of the Subscription.

**Listings** refers to the service offer(s) proposed directly by a Seller to other Users via the Marketplace.

*Listings are third party offers.*

**Application or mobile Application** refers to a program designed and/or produced by the Company that is downloadable and executable from the operating system of a smartphone or tablet.

*You can access our Service from your smartphone or tablet using our Applications.*

**Client** refers to an adult and able person or company who either accepts the Listing of a Seller on the Marketplace or purchases a Subscription on his own account, or on behalf of one or more User(s).

*The Client is the buyer.*

**Lesson** refers to the content of the lesson, the content of the corrections and the content of any supplementary corrections tailored to each User.

*Our Lessons are personalized.*

**Course** refers to all of the Lessons completed by and tailored to each User.

*Each User follows a personalized learning Course.*

**Marketplace** refers to a dedicated space on the Site allowing for Listings by Sellers to be posted and viewed by the Users.

*Many Sellers offer Services on our Marketplace*

**Provision** refers to service offered directly to the User by a Seller through a Listing on the Marketplace.

*Provisions are offered directly by third parties on the Marketplace.*

**Product** refers to 1) one of the service offers published by the Company, such as Gymglish, Frantastique or Rich Morning Show, or 2) training programs using Gymglish Studio technology operated by the Company but whose content is published by third parties.

*Product refers to our training solutions.*

**Service** refers to the delivery and correction of personalized Lessons, provided by the Company, as well as technical support to customers.

*Our Service includes, in particular, the sending and correction of Lessons.*

**Site** refers to the set of web pages managed by the Company, including gymglish.com, gymglish.fr, frantastique.comby the Company. frantastique.fr, richmorning.com.

*Site refers to all websites managed*

**Test** refers to the testing of the Service, proposed free of charge to the User for a limited period of time.

*Our Test is free and without commitment.*

**”User” or ”You” or ”They”** refers either to someone who has created an account on the Marketplace, or a person who uses the Service. Each User may subscribe to one or more Course.

*The User is you.*

**Seller** refers to an adult and able person or company who uses the Marketplace and posts Listings viewable by Users.

*The Seller places Listings to offer You his services.*

**Supervisor** refers to, if applicable, the individual(s) responsible for monitoring Users for whose account the Client has subscribed to the Service.

*The Supervisor is often a training manager or human resources manager.*

**Supervisor Space** refers to a space on the Site for Supervisors where they can invite Users, purchase Subscriptions, and supervise the training of Users.

## **2 OBJECT**

These PRO TCS solely address customers who do not hold the status of consumers under the provisions of the Consumer Code. They are intended to define the features and conditions of purchase of Subscriptions sold by the Company.

## **3 FEATURES AND CONDITIONS OF SUBSCRIPTION**

Compliance by the Client and the Supervisor(s) of these Subscriptions’ features is an important condition of the PRO TCS.

### **3.1 Supervisor Space**

The Company will grant Supervisors access to the Supervisor Space via a secure personal weblink which the Supervisors must keep confidential. Supervisors can invite other users to become Supervisors, they will then also have access to the Supervisor Space.

## 3.2 Free Trial

Prior to Subscription, the Company offers a Free Trial period without commitment, via the Supervisor Space, allowing to validate the quality of service and the compatibility of their software environment.

The Trial Period does not require a credit card number. If the Supervisor wishes to buy Subscriptions, he can visit his Supervisor Space, where different offers are presented.

*We offer a free trial period that does not require a credit card number, permitting users to explore our Services and test software compatibility.*

## 3.3 Validation of the order

The Client is responsible for the accuracy of all the information provided to the Company and payment service providers, including their address, country of residence and European VAT number, which are required to accurately know the rate of European VAT to which the Client is subject.

Clients may confirm their order after having viewed its details, total price, including all fees and taxes. They will have the opportunity to correct any errors. The contract is created upon the validation of the order of the Subscription(s) by the Company. Within the limits prescribed by applicable law, the validation of the order constitutes an electronic signature between the Parties - equivalent to a handwritten signature between the Parties.

## 3.4 Subscriptions

### 3.4.1 Delivery of Subscription

If the Client has chosen the **immediate single payment** purchase option when ordering, the Subscriptions will be available in the Supervisor Space once the payment has been received by the Company.

*In general, immediate single payment results in a discount.*

If the **single payment in 30 days** option is available (particularly, this option doesn't apply if there is an existing non-payment) and has been chosen by the Client, the Subscriptions will be available to the Client in their Supervisor Space immediately after the order is confirmed.

If the **monthly payments** purchase option is available and has been chosen by the Client, the Subscriptions will be available to the Client in their Supervisor Space once the first payment has been received by the Company.

### 3.4.2 Activation of Subscriptions

When the Client purchases one or more Subscriptions, they do not have to allocate the Subscription(s) at the

time of ordering. They can name the User(s) later in the Supervisor Space.

Once made available then assigned to a User, the Subscription will be immediately activated if no other service is already in progress; otherwise, it will be activated upon the expiration of the service previously subscribed to.

Please note : the Client has a maximum period specified when placing the order, or by default a period of three (3) months, to activate the Service after ordering. If it is not activated within the period, the Company will automatically consider the whole Subscription activated the day after this period has expired.

### **3.4.3 Change of User during Subscription**

During the Subscription period, on the condition that this option is offered in the Supervisor Space (particularly this option doesn't apply when a nominative funding of professional training has been requested), substituting one User for another is permitted and possible.

### **3.4.4 End of Subscription**

The Subscription concludes when the subscription period defined in the purchase order expires, beginning from the activation date. This means that a possible User of the Subscription may not be able to use the Service for the full period stated in the purchase order if the Client did not activate the Subscription within the activation period previously stated.

## **3.5 General features**

Each Subscription allows the User to follow an individual training Course consisting of Lessons. Each User can use a maximum number of weekly Lessons depending on the chosen Product.

### **3.5.1 Description of common features for Gymglish and Frantastique Products**

All Gymglish and Frantastique Products are available via the Website or via a dedicated Application. As they are identified by their e-mail address, Users can choose either of these methods of access. The same Lessons are available on both platforms. Every Gymglish and Frantastique Product allows Users to receive and complete a maximum of five Lessons per week, except at the beginning of the Trial Period, where the frequency may be greater. Users choose the days of the week

*The Frantastique and Gymglish Subscriptions allow Users to receive and process a maximum of five Lessons per week.*

when they wish to receive their Lessons with a minimum of one Lesson per week and within the limit of five, as previously indicated. By default, the Company sends the new Lesson on the first available day of reception depending on the User's response. Failing to receive a response from the User, the Company sends a reminder for the same Lesson on the first available day of reception seventy-two hours after the last mailing. Users can also set, in their Lesson or in their personal space, a period when Lessons may be paused (Manage my Absences in the Workbook), if this option is offered. This option affects neither the price nor the time period of the Gymglish or Frantastique Subscriptions bought.

Gymglish's and Frantastique's content may offend certain users due to its tone, possible references to adultery, common cultural stereotypes in North America and in Europe, which may be perceived as immoral in other cultures or other parts of the world. Therefore, these Products are not recommended for underage individuals. The Company cannot be held responsible for any consequences related to the content of the Lessons.

### **3.5.2 Description of the Features of the Rich Morning Show Website**

The Rich Morning Show caters towards teenagers and English beginners. It includes three sequences of twenty-one Lessons, incorporating twenty-one videos of the curriculum in ascending order of difficulty. If all sixty-three lessons are completed, the Service then focuses on the revision of knowledge. By default, the Company sends the new Lesson on the first available day of reception depending on the User's response. Failing to receive a response from the User, the Company sends a reminder for the same Lesson on the first available day of reception seventy-two (72) hours after the last mailing.

*The Rich Morning Show Service is designed for adolescents and beginners, and consists of three sequences of twenty-one Lessons followed by exercises.*

### **3.5.3 Description of the Features of Gymglish Studio Products**

The features of Gymglish Studio Products, Services using Gymglish Studio technology operated by the Company for which content is published by third parties, are defined on a case by case basis, detailed on the pages of the Site relevant to them.

## **3.6 Support and monitoring**

Each Subscription includes online technical support, as detailed in section 6.

Using their Supervisor Space, the Client can access a personalized online space offering educational and administrative monitoring of the Course followed by each of its Users during their Subscription. It is presented in the form of monitoring, analysis and reporting tables.

### **3.7 Remote Open Training**

Products published by the Company are eligible for Remote Open Training (law of 5 March 2014 and FOAD decree of 20 August 2014).

When placing an order, the Client will be informed of the nature of work required of Users, and the estimated time to complete it. The specific terms for monitoring and assessment for the remote open training courses on the Service are available in the present PRO TCS and on the Site.

As Users' participation helps to justify the training actions, monitoring tables are available in the Supervisor Space and are based on the number of Lessons completed, regardless of the time that the webpages were displayed.

Other information and data related to monitoring of the Service is available in this same Supervisor Space, particularly specific assessments at the start (pedagogical summary) and end of the training.

### **3.8 Teacher Option**

Depending on the Product, the User may also benefit from the free option called "Teacher", involving the activation of a teaching summary sent regularly to a third party offering face-to-face and/or telephone training which is not provided by the Company. Under no circumstances may the Company be held liable for the operation, commercial conditions or any other issue concerning this option.

## **4 PRICES AND PAYMENT CONDITIONS**

### **4.1 Price**

The Company's offers are invoiced according to prices displayed in the Website shop or in the Application at the time of purchase - the offer is valid for two hours after its display time.

Specific "education" rates are only available starting from a minimum order volume and are only for higher education establishments.

The Company reserves the right to change the price at any time during the offer period. Any revision is

applicable only to deals subscribed after the new prices go into effect. Offers do not include the cost of an Internet access required to access the Services, which remains the responsibility of the Client.

The Subscription is the provision of the Service, and must be paid regardless of the number of Lessons completed by the User.

## **4.2 Invoices**

Invoices issued by the Company are available for Clients in their Supervisor Space. Invoices and/or notifications of payment can be issued in the name of A9 or in the name of GYMGLISH, main trademark of the Company, regardless of the Product or Service purchased.

It is agreed that, if the payment was canceled after acceptance of the order, the offer(s) subscribed is (are) also canceled, without prejudice to any action that the Company could take.

## **4.3 Payments**

In the case of default on payment, a one-off fixed indemnity of 40 euros will be charged to cover collection costs, in accordance with the provisions of the French law of 22 March 2012 and the Customer shall pay the appropriate penalties, starting on the day following the payment date originally agreed upon. The penalty rate is 15% per annum, as set out in article L4.2-6 of the French 'Code du Commerce' (Commercial Code).

Subscriptions can also be suspended in the event of non-payment, without prejudice to any other claim.

# **5 CERTIFICATION**

Depending on the Product, and as the case may be depending on average completion of more than two Lessons per week, the Company will issue the User a certificate of level (for example the Gymglish diploma) at the end of the Subscription purchased by the Client. This certificate will show the result of continuous assessment throughout the training. To this effect, Users undertake to complete their Lessons personally and any Supervisors undertake to implement appropriate measures to ensure this is the case.

Depending on the User's offer (eg 1 year Gymglish PRO offer), and provided that the User is properly identified (via their signatures and/or photo identifications), this diploma will be certified by the Company.

*Gymglish delivers level assessments and certifications.*



## 6 ASSISTANCE

For any information, the Company's customer service is available through the Website, mostly on <https://help.gymglish.com>, via email by using the address support@gymglish.com, via chat in our online shop or by telephone at +33 1 53 33 02 40. We invite our Clients to use our email support system which ensures the best traceability.

According to the Product and level of service selected, individual teaching assistance from linguistic experts and content writers may be provided to the User at the end of the Lesson, if a reasonable request is made. The Company will respond to assistance requests within 24 working hours.

Depending on the Product, but at least for Gymglish, Frantastique and Rich Morning Show, each User has access to a personal space on the Site, which organizes and presents content based on lessons completed, including vocabulary, grammar and stories which can be kept after the Subscription.

*The Company offers Clients online help Websites, as well as assistance by email.*

*You have access to a personal space summarizing your data*

## 7 LIABILITY

The Company shall not be held responsible for content presented and posted online by Users, especially content of illegal nature.

The User is solely responsible for their personal use of the Site and Applications and for the direct or indirect consequences of this use. It is up to them to use the Site and Applications in accordance with the regulation in force and the recommendations of the CNIL (Commission Nationale de l'Informatique et des Libertés).

The Company has no obligation to screen, control, modify, or remove any published content.

Furthermore, the Company shall not be held responsible for Site or Application failure, any inability to access the Site or Application, or any service malfunction due to the Users' Internet service provider. The same applies for any other reason beyond the Company's control.

The liability of the Company shall not be incurred in the following cases :

- because of technical failures unrelated to the Company, such as communication problems (slowness, interruption, etc.) due to the Client's and/or User's(s) Internet Access Provider ;

*The liability of the Company shall not be incurred in the cases listed (problem with the Internet provider and/or telecoms operator of the User, damage linked to our content, force majeure, etc.).*

- because of non-receipt of Lessons by e-mail due to the Client's e-mail configuration or to the use of a mail server that does not deliver the Lessons sent to the User by the Company (particularly if the stated server decided to consider the Lessons of the Company as undesirable e-mails);
- because of misconduct, negligence, omission or default by the Client and/or the User(s) and/or any third party over which the Company has no control or supervision;
- because of damages related to the nature and/or the content of the Lessons;
- because of the non-compliance to the legislation of the country where the User resides or the site is accessed from.
- in any event of force majeure of less than thirty days. If the effects of a force majeure case were to last longer than thirty days from the notification of the force majeure by one of the Parties, the contract may be terminated automatically upon the request of either or both of the Parties, without any right to compensation by either of the Parties.
- in case of damages related to the nature and/or content of the Ads and/or of the messages and feedback on the Marketplace and/or of the actions (or lack of action) of the Users, except where the Company would have been given proper notice of the existence of an illicit or malicious Ad or message as defined by the law, and would not have acted promptly to remove it. Indeed, the Company operates as a host for the Ads on its Marketplace, in accordance with Article 6 of the Law for Confidence in the Digital Economy, dated June 21, 2004;
- and, unless explicitly stated otherwise, in case of any damage related to the acceptance by a User of a Seller Ad on the Marketplace, the Company being a third party with regard to the contract linking the Seller and the User.

The Company reserves the right to refuse any request for a Subscription from a Client with whom a dispute has occurred regarding the payment of all or part of a prior Subscription.

The Company reserves the right to exclude any User from the Marketplace in case of non-compliance with these conditions and/or any dispute regarding Listings.

The Company reserves the right to modify the content of the Services offered on its Site at any time.

## 8 PERSONAL INFORMATION

We take your privacy very seriously. For more information on the protection of personal data, please refer to our Privacy & Use of Information Policy available at the following address : <https://www.gymglish.com/documents/privacy-policy-en-latest.pdf>

*Our Privacy Policy details our commitments relating to privacy.*

## 9 TERMINATION

In case of violation of the above stated Policy by the Client and/or the User(s), the Company reserves the right to automatically terminate the granted License and/or Subscription :

- after a warning has remained without effect for seven (7) days.
- immediately and without notice, in the event of breaches related to intellectual property rights or repeated breaches pertaining to the above stated Terms and Conditions.

In cases of early termination of Service, the Company will under no circumstances reimburse the amounts fully or partially paid by the Client, without prejudice to any legal action that the Company may engage against the Client and/or the User(s), nor any sums due or damages that the Company could accept.

Conversely, in case of violation of the above stated Policy by the Company, the Client will also be allowed to automatically terminate the granted License and/or Subscription, and the amounts owed by the Company between the date of termination and the end date of the Subscription will be returned to the Client.

*We may terminate the Service in case of non-compliance with our Terms and Conditions.*

## 10 SECURITY

The Company is particularly careful about payment data security.

Payments are managed and secured by certified PCI DSS suppliers using SSL technology (Secure Socket Layer) for encrypting payment information during transactions over the network. This ensures the safety and confidentiality of payment information.

The Company never keeps the credit card information of its Clients.

*Your payments are secured by accredited and certified providers.*

## 11 HOST

The host of the Company is Rackspace GmbH, Luise-Ullrich-Str. 20 80636 Munich, Germany. The

*The host of the Company is the company Rackspace GmbH in Germany.*

company Rackspace is certified ISO/ IEC 27001, ISO 14001, ISO 9001, SOC 1 (SSAE 18), SOC 2, SOC 3, PCI DSS Level 1 FedRAMP JAB P-ATO, NIST 800-53, FISMA, NIST 800-171 (DFARS), CJIS, ITAR, FIPS 140-2, HITRUST HIPAA, HITECH, Swiss-US Safe Harbor, CDSA, SAS 70 Type II, Privacy Shield and Safe Harbor : see <https://www.rackspace.com/compliance>. Rackspace can be reached by phone on +44 20 3131 6381.

## **12 NULLIFICATION**

In case one or more of these provisions are invalid or declared as such under any law, regulation or following a definitive decision by a competent jurisdiction, the remaining provisions shall remain in effect.

In such a case, the Company will immediately remove and replace the clause concerned with a legally valid clause.

## **13 SECTION TITLES**

In a section title is deemed to be unclear, the text of the section remains valid and the section title should be considered null.

## **14 APPLICABLE LAW**

These Conditions are subject to French law, in terms of interpretation and application.

In case a problem arises in respect of the interpretation and/or execution hereof, the Parties agree to submit to proceedings of conventional mediation or any other alternative mode to settle the dispute.

In the event the mediation procedure fails, the dispute will be submitted to the competent court as designated by the Regulation of the European Parliament and the Council 1215/2012 of 12 December 2012 on jurisdiction, the recognition and enforcement of judgments in civil and commercial matters.

*This document is subject to French law.*